

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

MICHAEL DEAN BETHARD,

No. 05-12427

Debtor(s).

Memorandum on Objection to Claim

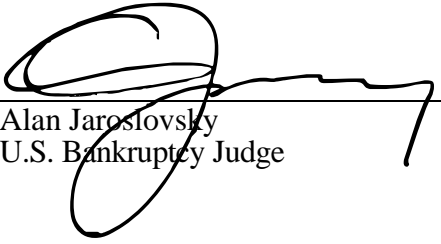
This Chapter 7 case was originally noticed to creditors as a no-asset case, and creditors were told not to file proofs of claim. On October 13, 2005, the trustee filed a request to the Clerk to give creditors a notice that there was a possibility of a dividend and that creditors should file claims. The same day, the Clerk generated a notice to all creditors that they should file claims and that the deadline for filing was January 13, 2006.¹ The next day, October 14, 2005, NetBank's attorney, Ellen Stern, filed a request for notice on behalf of NetBank. NetBank filed its claim on January 26, 2006; the Trustee objects to it on grounds of timeliness.

NetBank argues that it received no notice of the bar date, but this is clearly not the case. Because the notice of the bar date was generated the day before Stern filed her notice request, the notice of the bar date was sent to NetBank itself addressed exactly the same way as the original notice of the bankruptcy filing. Since NetBank admits that it received the original notice, there is nothing to rebut the presumption that it received the notice of the bar date. *In re Bucknum*, 951 F.2d 204 (9th Cir.1991).

¹Bankruptcy notices are actually mailed from the Bankruptcy Notice Center in Reston, Virginia, using the mailing list as of the date the notice is generated. Actual mailing was October 22, 2005.

1 While the court has some discretion to allow late claims in Chapter 11 cases, it does not have
2 that power in Chapter 7 cases, which are governed by FRBP 3002(c). Section 502(b)(9) of the
3 Bankruptcy Code requires that the Trustee's objection be sustained. Counsel for the Trustee shall submit
4 an appropriate form of order.

5 Dated: May 15, 2006

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9 Alan Jaroslovsky
10 U.S. Bankruptcy Judge
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